

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

January 12, 2004

CALL TO PODIUM:

Fred Felton
Assistant City Manager

RESPONSIBLE STAFF:

Fred Felton
Assistant City Manager

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
X	Ordinance (Introduction)
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	1/12/04
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE: Ordinance III

Introduction of an Ordinance to Amend Chapter 18A of the City Code Entitled "Smoking and Tobacco Products Placement" Section 18A-3 Entitled "Exceptions", Section 18A-6 Entitled "Designated Smoking Areas" and Section 18A-7 Entitled "Smoking in Eating and Drinking Establishments" so as to Prohibit Smoking in Eating and Drinking Establishments in the City Except Under Specified Requirements and Conditions, Exempt Private Clubs and Further to Renumber Certain Subsection Numbers and Add Appropriate Definitions

SUPPORTING BACKGROUND:

During the December 8, 2003 Work Session on the ordinance to adopt (via Tillie Frank) the Montgomery County ban on smoking in eating and drinking establishments, the Mayor and City Council directed staff to prepare City ordinances that offer various alternatives.

The attached ordinance is very similar to the Howard County model. Under this ordinance, existing and future restaurants would have the option of having a smoking area.

If a restaurant elects to have a designated smoking area, it must be in a completely enclosed area with a separate ventilation system. Additionally, a designated smoking area cannot be located in an area that patrons must pass to use restrooms or to be seated in a non-smoking area.

As drafted, existing restaurants would have one year to bring their establishments into compliance or eliminate smoking.

DESIRED OUTCOME:

Vote to introduce ordinance, and notify the public that a consolidated public hearing will be held on January 26, 2004.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 18A OF THE
CITY CODE ENTITLED “SMOKING AND TOBACCO PRODUCTS
PLACEMENT” SECTION 18A-3 ENTITLED
“EXCEPTIONS”, SECTION 18A-6 ENTITLED “DESIGNATED SMOKING
AREAS” AND SECTION 18A-7 ENTITLED “SMOKING IN EATING AND
DRINKING ESTABLISHMENTS” SO AS TO PROHIBIT
SMOKING IN EATING AND DRINKING ESTABLISHMENTS
IN THE CITY EXCEPT UNDER SPECIFIED REQUIREMENTS
AND CONDITIONS, EXEMPT PRIVATE CLUBS AND FURTHER
TO RENUMBER CERTAIN SUBSECTION NUMBERS AND
ADD APPROPRIATE DEFINITIONS

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled that Chapter 18A of the City Code, Sections 18A-3, 18A-6 and 18A-7 are hereby amended to read as follows:

CHAPTER 18A. SMOKING AND TOBACCO PRODUCTS PLACEMENT

* * * * *

Sec. 18A-3. Exceptions.

Smoking is permitted:

- | | | | | | | | | |
|-----|---|---|---|---|---|---|---|---|
| (1) | * | * | * | * | * | * | * | * |
| (2) | * | * | * | * | * | * | * | * |
| (3) | * | * | * | * | * | * | * | * |
| (4) | * | * | * | * | * | * | * | * |
| (5) | * | * | * | * | * | * | * | * |
| (6) | * | * | * | * | * | * | * | * |
| (7) | * | * | * | * | * | * | * | * |
| (8) | * | * | * | * | * | * | * | * |

- (9) In the bar or dining area of a club as the term “club” is defined in the state alcoholic beverage law and the club has an alcoholic beverage license issued to private clubs under the state alcoholic beverages law which allows consumption of alcoholic beverages on the premises.
- (10) In an eating and drinking establishment certified by the City Manager or his designee as conforming to the standards and requirements of Section 18A-7 of this Chapter.

Sec. 18A-6. Designated smoking areas.

The person in charge of any area specified in section 18A-2 may designate separate areas where smoking is permitted; provided that:

- (1) An area must not be designated as a smoking area if smoking in that area is prohibited by this Chapter 18A; by any other law, ordinance or regulation or by a fire marshal.
- (2) * * * *
- (3) * * * *
- (4) * * * *

Sec. 18A-7. Smoking in eating and drinking establishments.

(a) *Definitions.* In this section, the following words have the meaning indicated:

- (1) “Bar” means an indoor, enclosed area where the primary activity is the service of alcoholic beverages and where the service of food is only incidental to the service of alcoholic beverages.

- (2) “Designated Smoking Area” means that enclosed area in an eating and drinking establishment that complies with the standards and requirements of subsection (c) of this Section.

~~[(2)]~~(3) “Eating and drinking establishment” means a food and drink service facility or establishment open to the public and regulated under Chapter 18A. Eating and drinking establishments under this section are not clubs as defined under the state alcoholic beverage control laws.

~~[(3)]~~ (4) “Enclosed” means separated by walls or partitions and under roof.

~~[(4)]~~ (5) “Indoor” means covered by a roof and enclosed.

~~[(5)]~~ (6) “Private function” means an event in an enclosed area to which entry is not available to the general public but only to those whom the sponsor of the event invites. “Private function” does not mean an event held by a private club or association to which members of the general public are invited.

(7) “Separate ventilation system” means a mechanical HVAC unit which vents directly outdoors, is not interconnected to the system operating in non-smoking areas and is an approved system as defined in the *Building Code*.

(b) *Applicability.*

(1) This section applies to eating and drinking establishments [if the total seating capacity of all non-bar areas is fifty (50) or more].

(2) This section does not apply to any area of an eating and drinking establishment that is: [a bar; or] being used exclusively for a private function or is a club as defined under the state alcoholic beverage control laws which has a private club license for consumption on premises or is certified by the City Manager or his designee as meeting the standards and requirements of subsection (c) of this Section 18A-7.

[(c) *Nonsmoking area required.* A person who operates an eating and drinking establishment must designate a contiguous, nonsmoking area that is at least fifty (50) percent of the total seating area of that part of the establishment that is not: a bar; or being used exclusively for a private function].

(c) *Designated smoking area.* A designated smoking area may be maintained in an eating and drinking establishment which is certified by the City Manager or his designee as complying with the following standards and requirements within twelve (12) months from the effective date of this Ordinance:

- (i) The eating and drinking establishment is in operation and open for business with a valid use and occupancy certificate; and
- (ii) The establishment contains a separate designated smoking area which is not a restroom and which is enclosed on all sides from floor to ceiling by solid walls with self closing doors used for ingress and egress; and
- (iii) That the separate designated smoking area has a separate ventilation system; and
- (iv) The designated smoking area is not located in an area that patrons must pass through to use restrooms or be seated in the non-smoking areas of the establishments.

(d) *Notice.* Any person who operates an eating and drinking establishment subject to this section must:

- (1) Post conspicuously at each entrance a sign stating that a designated [non]smoking area is available; or that smoking is not permitted anywhere on premises.
- (2) Ask whether each patron wants to be seated in the smoking or nonsmoking area; if the establishment contains an approved designated smoking area.

(3) Refuse to seat or serve a person who smokes except in an approved designated smoking area [in the nonsmoking area]; and

(4) Ask a person who smokes in a nonsmoking area in the indoor premises to leave the establishment if the person continues to smoke after proper warning.

(e) *Prohibition.* A person must not smoke in:

(1) An area that is designated for nonsmoking under this section; or

(2) Any restroom that is open to customers.

(f) *Enforcement and penalty.*

(1) A person who operates an eating and drinking establishment in violation of any provision of this section may be punished pursuant to the provisions of section 18A-12.

(2) A person who smokes in a nonsmoking area in violation of this section may be punished pursuant to the provisions of section 18A-12.

* * * * *

ADOPTED this _____ day of _____, 2004 by the City Council of Gaithersburg, Maryland.

SIDNEY A. KATZ, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this _____ day of _____, 2004. APPROVED by the Mayor of the City of Gaithersburg, this _____ day of _____, 2004.

SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the _____ day of _____, 2004, and that the same was approved by the Mayor of the City of Gaithersburg on the _____ day of _____, 2004. This _____ day of _____, 2004. This Ordinance will become effective on the _____ day of _____, 2004.

David B. Humpton, City Manager

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>